

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-03-AT-077
)	
Cumulus Licensing Corp.)	NAL/Acct. No.200332480025
Owner of Antenna Structures #1052722 and)	
#1052724 near Savannah, Georgia)	FRN 0005-2603-77
Milwaukee, Wisconsin)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 27, 2003

By the Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Cumulus Licensing Corp. (“Cumulus”), owner of antenna structures #1052722 and #1052724 apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.50 of the Commission’s Rules (“Rules”).¹ Specifically, we find Cumulus apparently liable for failure to clean and repaint its antenna structures to maintain good visibility.

II. BACKGROUND

2. On August 22, 2001, an agent of the Commission’s Atlanta Field Office (“Atlanta Office”) inspected the antenna structures associated with AM radio station WBMQ bearing FCC antenna structure registration (“ASR”) numbers 1052722, 1052724 and 1052726 located near Savannah, Georgia.² The paint on the structures was badly faded and peeling, greatly reducing visibility of the structures’ obstruction markings. In the WBMQ public inspection file, the agent found a written statement by the station’s chief engineer stating that the antenna structures’ deteriorated paint constituted an air navigation hazard. The Atlanta Office issued to Cumulus a Notice of Violation on September 19, 2001, for failure to maintain good visibility of the antenna structures’ obstruction markings. Cumulus submitted a written

¹ 47 C.F.R. § 17.50.

² Cumulus Licensing Corp., the subject of this NAL, a subsidiary of Cumulus Media Inc., is the licensee of radio station WBMQ as well as the registered owner of the two captioned antenna structures. WBMQ utilizes the two captioned antenna structures as well as a third structure with ASR #1052726. At the time of the August 22, 2001 inspection, Cumulus Licensing Corp. stated that they owned antenna structure #1052726. However, the Commission’s ASR database listed the name of the former owner, Savannah Communications LP DBA = WBMQ-AM, as the registered owner. In the September 19, 2001 Notice of Violation, Cumulus Licensing Corp. was cited for, among other things, failure to notify the Commission of a change in antenna structure ownership for structure #1052726. In January, 2002, the registered owner information for structure #1052726 was changed to Cumulus Broadcasting Inc., also a subsidiary of Cumulus Media Inc. While not a subject of this NAL, we note that antenna structure #1052726 also violated Section 17.50 of the Rules due to the poor visibility of the obstruction markings.

reply dated October 15, 2001, stating that they were currently acquiring bids to repaint the antenna structures and anticipated that the repainting of the structures would be completed by December 31, 2001.

3. On October 18, 2001, the Atlanta Office sent to Cumulus a Continuation of Notice of Violation requesting the status of the antenna structure repainting. Cumulus' legal counsel submitted a written reply dated January 9, 2002, stating that Cumulus is the owner of the antenna structures in question and that Cumulus would make a determination, no later than January 31, 2002, whether to repaint the towers or replace the towers altogether with a tower painted in conformance with Commission requirements.

4. Cumulus's counsel submitted another written reply dated February 4, 2002, stating that Cumulus planned to replace the existing antenna structures, and that completion of the construction of the new antenna structures should be either June or July of 2002.

5. Cumulus's counsel submitted another written reply dated July 31, 2002, stating that after further evaluation of the time and expense involved in the construction of a new antenna structure for WBMQ(AM), Cumulus had decided to relocate the operations for WBMQ(AM) to another existing antenna structure in Savannah, Georgia. Following the move to the new structure, Cumulus would dismantle the current WBMQ(AM) antenna structures.

6. On March 18 and 19, 2003, an agent of the Atlanta Office again inspected Cumulus' antenna structures bearing ASR numbers 1052722 and 1052724. The paint covering more than one-half of the surface of the structures was severely faded and peeling, greatly reducing visibility of the structures' obstruction markings. The aviation orange and white paint bands were not distinguishable at a distance of one-half mile from the structures. The Commission's ASR database showed these structures are owned and registered to Cumulus and require painting.

III. DISCUSSION

7. Cumulus' antenna structures' registration numbers 1052722 and 1052724 specify lighting and painting for these structures that include requirements that the structures be painted with alternating aviation orange and white bands. Section 17.50 of the Rules requires that antenna structures requiring painting be cleaned or repainted as necessary to maintain good visibility. Section 17.6(a) of the Rules³ states that antenna structure owners are responsible for maintaining a structure's paint. On March 18 and 19, 2003, Cumulus' antenna structures #1052722 and #1052724 had severely faded and peeling paint making the bands indistinguishable at a distance of one-half mile from the structure, resulting in poor visibility of the structures' obstruction markings.

8. Based on the evidence before us, we find Cumulus willfully⁴ and repeatedly⁵ violated Section

³ 47 C.F.R. § 17.6(a).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent

17.50 of the Rules by failing to repaint its antenna structures to maintain good visibility in accordance with the painting specifications associated with its antenna structures #1052722 and #1052724.

9. Pursuant to Section 1.80(b)(4) of the Rules,⁶ the base forfeiture amount for failure to comply with prescribed antenna structure markings is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Considering the entire record and applying the factors listed above, this case warrants a forfeiture of \$10,000.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ Cumulus Licensing Corp. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.50 of the Rules by failing to clean and repaint its antenna structures to maintain good visibility.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Cumulus Licensing Corp. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

13. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁵ The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁰ See 47 C.F.R. § 1.1914.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

16. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Cumulus Licensing Corp., 111 East Kilbourn Ave., Ste. 2700, Milwaukee, WI 53202.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director
Atlanta Office, Enforcement Bureau